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6 Attorneys for Plaintiffs

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8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **EDITH MACIAS, individually and on  
 11 behalf of similarly situated  
 12 individuals; HOTON DURAN;  
 13 TIFFANY HUYNH; AURA MENDIETA;  
 14 WILLIAM LABOY; MIGUEL ACOSTA;  
 15 CRUZ ACOSTA; CUAUHTEMOC  
 16 TORAL; and TERESA VILLEGAS,**

17 **Plaintiffs,**

18 **vs.**

19 **THOMAS J. TOMANEK; and  
 20 MARK GARIBALDI, individually  
 21 and doing business as THE  
 22 GARIBALDI COMPANY,**

23 **Defendants.**

24 **Case No. C07-3437 JSW (EDL)**

25 **PLAINTIFFS' SUPPLEMENT TO  
 26 OPPOSITION TO DEFENDANTS'  
 27 MOTIONS TO BE DECLARED  
 28 PREVAILING PARTIES AND FOR AN  
 29 AWARD OF ATTORNEYS' FEES AND  
 30 COSTS**

31 ***Matter Referred to Magistrate Judge  
 32 Elizabeth D. LaPorte (Doc. 43)***

33 **Hearing:**

34 **Date:** March 4, 2008

35 **Time:** 9:00 a.m.

36 **Room:** Courtroom E  
 37 15th Floor

38 Plaintiffs file this supplement to their opposition to defendants' motions to be  
 39 declared the prevailing parties in this action pursuant to California Civil Code § 1717  
 40 and for an award of costs and attorneys' fees, filed earlier today (doc. 44).

41 To the extent that defendant Thomas Tomanek seeks to be deemed the  
 42 prevailing party on plaintiffs' RICO claim, he cannot be so declared. Plaintiffs' RICO  
 43 claim was not stated against him. Defendant Tomanek obtained only a dismissal for  
 44 lack of subject matter jurisdiction. (See Order, doc. 35 at p. 6.) Obtaining such a  
 45 dismissal is not prevailing "on a contract" within the meaning of California Civil Code §

46 **PLAINTIFFS' SUPPLEMENT TO OPPOSITION TO DEFENDANTS' MOTIONS TO BE DECLARED PREVAILING  
 47 PARTIES AND FOR AN AWARD OF ATTORNEYS' FEES AND COSTS - Case No. C 07-3437 JSW (EDL)**

1 1717. Tomanek has not argued that the dismissal for lack of subject matter jurisdiction  
2 makes him a prevailing party on the contract, nor could he, for the reasons already set  
3 forth in plaintiffs' opposition. (See doc. 44 at pp. 18-19.)

4 Accordingly, even in the event the Court decides that defendant Garibaldi is the  
5 prevailing party on the contract because he obtained a dismissal of plaintiffs' RICO  
6 claim, no fees or costs should be awarded to defendant Tomanek. Moreover, the fees  
7 sought by Garibaldi should be reduced as set forth in plaintiffs' opposition to 50% of  
8 those applicable to the RICO claim. (See doc. 44, pp. 20-23.)

9 Dated: January 30, 2008.

10 Respectfully submitted,

11 BRANCART & BRANCART

12  
13 /s/  
14 Christopher Brancart  
15 Attorneys for Plaintiffs  
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## PROOF OF SERVICE

I am over the age of 18 and am not a party to the within action. My business address is 8205 Pescadero Road, Loma Mar, California 94021.

On January 30, 2008, I served a true and correct copy of the following document(s):

**PLAINTIFFS' SUPPLEMENT TO OPPOSITION TO DEFENDANTS' MOTIONS  
TO BE DECLARED PREVAILING PARTIES AND FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS**

upon the following person(s):

Ms. Sara Allman, Allman & Nielsen, 100 Larkspur Landing Circle, Suite 212  
Larkspur, CA 94939; and

Mr. John S. Blackman, Farbstein & Blackman, 411 Borel Ave., Suite 425, San Mateo, CA 94402

	<b>BY HAND DELIVERY:</b> By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
	<b>BY MAIL:</b> By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
	<b>BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY):</b> By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
	<b>BY FACSIMILE:</b> By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.
xx	<b>BY ELECTRONIC TRANSMISSION OF THE “NOTICE OF ELECTRONIC FILING:”</b> By electronically filing the document(s) (All counsel are “Filing Users”)

I certify that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 30, 2008, at Loma Mar, California.

/s/ Christopher Brancart  
Christopher Brancart